

**Safety Evaluation by the DOE Regulatory Unit
of Proposed Authorization Basis Amendment Request (ABAR)
ABAR-W375-99-00001, Rev. 2
to the BNFL Inc. Employee Concerns Program
(Contract DE-AC27-96RL13308)**

1.0 INTRODUCTION

The Contract¹ requires that the Contractor submit an Employee Concerns Management System (ECMS) for the U.S. Department of Energy, Regulatory Unit (RU) review and approval. By letter dated May 23, 2000, the Contractor submitted an Authorization Basis Amendment Request (ABAR) to the Regulatory Unit (RU) for revision of the River Protection Project-Waste Treatment Plant (RPP-WTP) Employee Concerns Program (ECP).² The ABAR consisted of the following:

- Complete rewrite of the existing ECP.
- Statement that the proposed ECP revision submitted to the RU on January 26, 2000 is being withdrawn.
- Responses to concerns/issues raised by the RU at meetings held with the Contractor's staff on February 16 and April 12, 2000 and in a February 29, 2000³ letter to the Contractor.
- Attachment containing a "Justification of ECP Changes."
- Safety evaluation for certain of the proposed changes to the ECP.
- Underline/strikeout version of the current ECP.

This Safety Evaluation Report (SER) was prepared by the RU in response to the May 23, 2000, ABAR submittal. This SER is based on review guidance issued by the RU in 1996, RL/REG-96-03, *Guidance for Review of TWRS Privatization Contractor Employee Concerns Management System*, and in RU Management Directive 3.4, "Processing Authorization Basis Amendment Requests."

¹ Contract No. DE-AC27-96RL13308, between DOE and BNFL Inc., dated August 28, 1998, Part I, Section C.5, Standard 4(c)(2)(d).

² 00-RU-0396, BNFL letter from A. J. Dobson to D. C. Gibbs, RU, "Contract No. DE-AC27-96RL13308 - W375 - United States Department of Energy Regulatory Unit Authorization Basis Amendment Request (ABAR-W375-99-00001, Revision 2) for Revision of the Employee Concerns Program (BNFL-5193-ECP-01, Revision 0)," CCN: 012999, dated May 23, 2000. This letter submitted Revision 3 of the ECP.

³ 00-RU-0248, RU letter from D. C. Gibbs to M. J. Bullock, "Regulatory Unit (RU) Comments on BNFL's Employee Concerns Program Authorization Basis Amendment Request (BNFL-5193-ECP-010)," dated February 29, 2000,

2.0 BACKGROUND

The Contractor's current ECP was issued in March 1997,⁴ and was approved by the RU in a letter dated April 28, 1997.⁵ On April 2, 1999, the Contractor submitted an ABAR to the RU to revise its ECP.⁶ The RU sent review comments on the ABAR to the Contractor on April 30, 1999.⁷ The review comments stated that the Contractor's ABAR evaluation was not documented in sufficient detail that a knowledgeable individual reviewing the evaluation could identify the technical issues considered during the evaluation and bases for the determinations. An information exchange meeting concerning the RU comments was held on June 23, 1999. The Contractor submitted minutes of the meeting to the RU on July 13, 1999.⁸ The RU sent comments on the minutes to the Contractor on August 25, 1999.⁹

To address these comments, the Contractor submitted Revision 1 to the April 2, 1999, ABAR to the RU on January 26, 2000.¹⁰ The RU performed a review of Revision 1 to the ABAR and found that the revised ECP did not fully address the RU's review guidance. In a letter dated February 29, 2000, the RU provided the Contractor with a detailed listing of the RU review comments. Based on these comments, the Contractor withdrew Revision 1 and submitted Revision 2 of the ABAR in the letter dated May 23, 2000. Revision 2 to the ECP ABAR is the subject of this SER. Resolution of the RU's review comments is addressed in the following individual SER sections.

3.0 EVALUATION

3.1 Review Approach

As previously stated, the Contractor submitted a complete rewrite of the ECP (Revision 3) in Revision 2 of the ABAR. In order to establish the acceptability of the proposed ECP, the RU reviewers focused on two major criteria.

⁴ BNFL, "Employee Concerns Program: Description and Instructions," BNFL-5193-ECP-01, Revision 0, March 18, 1997.

⁵ 97-RU-0145, Letter, D. C. Gibbs to M. J. Bullock, BNFL, "Approval of BNFL, Inc. Employee Concerns Management System, (BNFL-5193-ECP-01, Revision 0)," dated April 28, 1997.

⁶ 99-RU-0238, Letter, M. J. Bullock to D. C. Gibbs, RU, "...Authorization Basis Amendment Request for Revision of the Employee Concerns Program (BNFL-5193-ECP-01, Revision 0)," dated April 2, 1999. (This letter submitted Revision 1 to the ECP.)

⁷ 99-RU-0268, Letter, D. C. Gibbs to M. J. Lawrence, BNFL, "US Department of Energy, Regulatory Unit (RU) Response to Authorization Basis Amendment Request for Revision of the Employee Concerns Program (BNFL-5193-ECP-01, Revision 0)," dated April 30, 1999.

⁸ 99-RU-0428, Letter, A. J. Dobson to D. C. Gibbs, RU, "Contract No. DE-AC06-96 RL13308-W375-Preliminary Information Regarding Proposed Changes to the Employee Concerns Program," dated July 13, 1999.

⁹ 99-RU-0503, Letter, D. C. Gibbs to M. J. Lawrence, BNFL, "BNFL Inc. (BNFL) Employee Concern Program Meeting Minutes," dated August 25, 1999

¹⁰ 00-RU-0200, Letter, A. J. Dobson to D. C. Gibbs, RU, "Contract No. DE-AC06-96RL13308-W375-United States Department of Energy, Regulatory Unit Authorization Basis Amendment Request for Revision of the Employee Concerns Program (BNFL-5193-ECP-01, Revision 0)," dated January 26, 2000. (This letter submitted Revision 2 of the ECP.)

Specifically, the reviewers evaluated the revised ECP against the submittal expectations described in RL/REG-96-03, Section 6, "Attributes for Key Program Elements," of the RU's review guidance. The reviewers also examined the rewritten ECP against the current ECP. Each change was examined individually. Specifically the reviewers examined the Contractor's rationale for each change, with an emphasis on the equivalency of the current to the existing program. In particular, the reviewers examined whether the changes, taken together, represented a decrease in commitment. Each attribute described in Section 6 of RL/REG-96-03 was reviewed in detail and is described below.

3.2 Commitment to DOE Policy on Employee Concerns

The reviewers evaluated the Contractor's submittal against the guidance and expectations described in RL/REG-96-03, Section 6.1, "Commitment to DOE Policy on Employee Concerns." In particular the reviewers evaluated if the submittal addressed the following:

- The policy states that Contractor management has committed to adopt or exceed the provisions of DOE policy for the management or safety concerns.
- Reprisal undertaken at any level of management authority is an unacceptable practice.
- Conditions that constitute reprisal are made known to employees and managers throughout the organization.
- Mechanisms for responsive treatment of concerns is consistent with DOE Order 5480.29, Section 9, were provided.

The policy encourages employees to bring concerns to the attention of Contractor management by the most effective means available. The policy also indicates that the employee may use the RU or other appropriate agency employee concerns program to address concerns if so desired.

The reviewers found that ECP, Revision 3, addressed all of the elements described above. In particular Sections 1, "Introduction," and 2, "Policy," describes the Contractor's management commitment to an ECP and committed the program to be consistent with the Contract. The DOE Contract, in particular Table S4-1, referenced DOE Order 5480.29, "Employee Concerns Management System." The reviewers found the commitments made in these sections to be consistent with the order.

The reviewers also found that Section 2 clearly addressed the Contractor's non-tolerance of reprisal activities and that this information would be communicated via mandatory ECP training. The reviewers compared the ECP program *in toto* with the elements described in DOE Order 5480.29, Section 9, "Program Requirements," and found that the Contractor's commitment made in the ECP Revision 3, were consistent with these requirements.

ECP Section 4.2, "Initiating a Concern," was modified to state:

"Employees are advised that they are not obligated to express their concern to project personnel prior to notification of the Regulatory Unit (RU), other authorized Government agency that could receive employee concerns, or any other avenue of expression."

The reviewers found the above revised wording to be clear and unambiguous and adequately resolved an RU comment concerning the ability of Contractor employees to use the RU or other agencies to communicate potential concerns.

Conclusion

The reviewers found that ECP, Revision 3, included provisions for meeting the elements of the review guidance and expectations described in Section 6.1 of RL/REG-96-03. The provisions, if properly implemented, should provide for an ECP that is supported by Contractor management and does not tolerate reprisal activities. Previous RU comments on this subject were adequately resolved.

3.3 Designation of Employee Concerns Manager

The reviewers evaluated the Contractor's submittal against the guidance and expectations described in RL/REG-96-03, Section 6.2, "Designation of Employee Concerns Manager." In particular, the reviewers evaluated if the submittal addressed the following:

- Formal designation of its Employee Concerns Program Manager(s).
- Periodic submission to the RU's Employee Concerns Point of Contact of a complete list of its Program Managers, including names, titles, and telephone numbers.

The reviewers found that ECP, Revision 3, addressed the two elements described above. In particular, Section 5, "Employee Concern Program Participant Responsibilities," included provisions for the designation of the ECP Officer and Coordinator (s), by senior management. ECP Section 4.4, "Records and Reporting Requirements," was modified to include a requirement for submitting changes to the ECP Officer or Coordinator(s) assignment, including the name, title, and phone number of the new appointee. This information will be provided to the RU as part of a required quarterly report. The reviewers found that this modification adequately resolved an RU comment concerning RU notification of organizational changes in the contractor's ECP.

Conclusion

The reviewers found that ECP Revision 3 included provisions for meeting the elements of the review guidance and expectations described in Section 6.2 of RL/REG-96-03. The provisions, if properly implemented, should provide for an ECP that formally designates the ECP Officer and Coordinator(s) and informs the RU when changes in assignment for those positions have been made. Previous RU comments on this subject were adequately resolved.

3.4 Notification of Employees and Establishing a Hot-line

The reviewers evaluated the Contractor's submittal against the guidance and expectations described in RL/REG-96-03, Section 6.3, "Notification of Employees and Establishing a Hot-line." In particular the reviewers evaluated if the submittal addressed the following:

Description of an information poster which will be used to inform employees of the Contractor's policy on employee concerns management, the options for initiating a concern, and information regarding reporting of prohibited acts.

The establishment of a secure (i.e., confidential) hotline consistent with the DOE Order 5480.29, Section 9.a.(6), 9.b, and (9)(a).

The reviewers found that ECP, Revision 3, addressed the elements described above. In particular, Section 5.1, "ECP Staff", was significantly revised to provide additional details related to the ECP Officer's responsibilities. The responsibilities included notification of employees of the ECP Policy by using information posters and the establishment and maintenance of a 24-hour telephone capability. The reviewers found that the revised section adequately resolved RU comments concerning information posters and 24-hour telephone capability.

Conclusion

The reviewers found that ECP, Revision 3, included provisions for meeting the elements of the review guidance and expectations described in RL/REG-96-03, Section 6.3. The provisions, if properly implemented, should provide for an ECP that notifies employees via information posters and the establishment of a 24-hour telephone capability. Previous RU comments on this subject were adequately resolved.

3.5 Operation of an Employee Concerns Management System

The reviewers evaluated the Contractor's submittal against the guidance and expectations described in Section 6.4 of RL/REG-96-03, "Commitment to DOE Policy on Employee Concerns." In particular the reviewers evaluated if the submittal addressed the following:

- Prompt identification, prioritization, evaluation, and corrective and protective response and resolution of employee concerns.
- Protection of privacy and confidentiality.
- Prompt contact with the employee to confirm understanding of the concern.
- Employee acknowledgment regarding intent of the concern, priority determination, and an established schedule for resolution.

- Report tracking to ensure that traceable records exist of actions taken to resolve the concern.
- Standards for investigation of concerns and criteria for the conduct of concern resolution.
- Periodic reporting of the status of concerns.

ECP, Revision 3, included provisions for prompt identification, prioritization, evaluation, and corrective and protective response and resolution of employee concerns. Provisions for protection of privacy and confidentiality were also included.

ECP, Revision 3, Sections 4.3, "Investigation and Corrective Action," and 5.1, "ECP Staff," included provisions for establishing prompt contact with the employee to confirm understanding of a concern. Section 5.1 stated that the ECP Officer's responsibilities included, "ensuring that concerns are investigated and resolved in a timely manner and that mechanisms exist to assure confidentiality." Section 4.2, "Initiating a Concern," stated that concerns may be registered in writing or by telephone. Section 4.3 stated that the employee should receive acknowledgment of the receipt and categorization of the concern within 5 working days and resolution of the concern within 30 working days. The addition of the acknowledgement of the categorization adequately resolved an RU comment concerning categorization of concerns. Sections 1, "Introduction," and 2 "Policy," encouraged employees to first identify concerns through the use of normal systems for deficiency reporting. Section 4.3 also described three levels of prioritization.

ECP, Revision 3, addressed the content of records in Section 4.4, "Records and Reporting Requirements," by stating that:

"As a minimum, the ECP Officer will maintain the following records:

- concern log;
- concern report;
- investigation and resolution summaries; and
- results of management assessment of the ECP."

The addition of this list of the type of information that will be maintained as ECP records adequately resolved an RU comment concerning minimum content of records. Section 4.1, "Employee Concerns Program Officer and Coordinator," included provision for secure records storage. Section 4.3 stated that, "A written record of the concern, information obtained during the investigation process, contact with the concerned employee, and actions taken to resolve the concern will be kept in a secure environment."

Section 4.3 addressed investigation of concerns. Section 4.3 included provisions to avoid selecting investigators who may have conflicts of interests. Section 4.3 also stated that, "The investigator may use techniques such as root cause analysis to assure that core issues have been identified during the investigations," and that, "Guidance for conducting investigations and for extensions of recommended timeframes are included in procedures." The addition of the provisions for selection of investigators and references to investigative techniques and procedures adequately resolved previous RU comments regarding (1) lack of sufficient

information about the investigative process, (2) the means for extending timeframes, and (3) assurance that investigation of concerns will not normally be performed by the employee's organization. Section 5.1 identified that the ECP Officer was responsible for establishing criteria for investigation and resolution of concerns. Section 5.1 stated that the ECP Officer was responsible for "ensuring that the concern has been investigated and that core issues identified have been corrected and confirmed to management (e.g., entry of the issue into the corrective action program)." The addition of this responsibility adequately resolved an RU comment on the investigation and closure process. Also, the first paragraph of Section 4, "Employee Concerns Program Structure," referred the reader to procedures for reporting, investigating, and resolving concerns.

Sections 2 and 4.2 address provisions for maintaining privacy and confidentiality of information and sources. Section 2 states that, "Confidentiality and anonymity (as required) will be observed." Section 4.2 describes the opportunity for confidential treatment of the employee's concern and identity. Furthermore, Section 5.1 lists as one of the ECP Officer's responsibilities, "ensuring...that mechanisms exist to assure confidentiality." The addition of this responsibility adequately resolved an RU comment concerning who was responsible for ensuring that mechanism were established for ensuring confidentiality. Section 4.1 states that "Management will support the performance of these duties by (1) recognizing and supporting the need to keep employee concern information confidential, and (2) providing office facilities which allow ready access by concerned employees, privacy for discussions, and secure records storage. Section 4.2 also provides the option for employees to submit concerns anonymously. Section 4.2 and Section 5.3, "RPP-WTP Project Organization Employees," state that employees submitting concerns anonymously may contact the ECP staff to learn the status of the concerns. Making the language in Sections 4.2 and 5.3 consistent with respect to providing a mechanism for allowing employees to follow the status of their anonymous concerns adequately resolved an RU comment on this topic.

Sections 4.4 and 5.1 addressed reporting. Section 4.4 included provisions for quarterly reporting to RPP-WTP senior management and to the RU. Section 4.4 stated that:

"The report will address the following:

- the concerns activity levels for the period;
- nature of the concerns;
- resolution of the concerns;
- program enhancements; and
- if changes are made in the ECP Coordinator or Officer assignment, the name, title, and phone number of the new appointee."

The addition of the list of information to be contained in the quarterly reports adequately resolved an RU comment concerning the minimum content of the quarterly reports. Section 5.1 identified that the ECP Officer was responsible for implementing the administrative controls to support the program, and that guidance and specific responsibilities of the ECP Officer and Coordinator(s) were contained in procedures. The listed responsibilities of the ECP Officer included the following, among others:

- Establishing procedures describing methods and processes used to implement program requirements.
- Reporting concerns to DOE or other agencies as required by regulations.
- Submitting reports, including those required to applicable regulatory agencies.

Conclusion

The reviewers found that ECP Revision 3 included provisions for meeting the elements of the review guidance and expectations described in Section 6.4 of RL/REG-96-03. The reader was referred to procedures for the implementing instructions for these provisions. The provisions, if properly implemented, should result in adequate operation of the employee concerns management system. Previous RU comments on this subject were adequately resolved.

3.6 Identification of Significant Issues

The reviewers evaluated the Contractor's submittal against the guidance and expectations described in RL/REG-96-03, Section 6.5, "Commitment to DOE Policy on Employee Concerns." In particular the reviewers evaluated if the submittal addressed the following:

- Prompt establishment of the significance of reported concerns.
- Criteria for evaluation of the significance and priority of the concern resolution.
Referral of concerns to affected DOE groups or other agencies.
Monitoring program results for trends of performance.

Sections 4.3, "Investigation and Corrective Action," and 5.2, "RPP-WTP Project Organization Managers," addressed prompt establishment of the significance of reported concerns. Section 4.3 described three prioritization categories. Section 5.2 explained to RPP-WTP Project managers and supervisors the expectation that legitimate safety concerns, that have not been identified by any other means, are captured within the ECP for appropriate action. The first paragraph of Section 4, "Employee Concerns Program Structure," referred the reader to procedures for reporting, investigating, and resolving concerns.

ECP Revision 3 addressed referral of concerns to affected DOE groups or other agencies as one of the ECP Officer's responsibilities listed in Section 5.1, "ECP Staff." The first paragraph of Section 5.1 stated that, "Guidance and specific responsibilities of the ECP Officer and Coordinator(s) are contained in procedures." The addition of this responsibility and reference to procedures adequately resolved an RU comment concerning the responsibilities of the ECP organization. Section 4.3 established a category of concerns that require reporting to regulatory agencies.

Section 4.4, "Records and Reporting Requirements," addressed monitoring program results including provision of quarterly reports to Contractor management and the RU. The content of the quarterly reports was previously described in Section 3.5 of this Safety Evaluation Report.

The addition of the description of reports, the ECP Officer's responsibility for referral of concerns to affected DOE groups or other agencies, and the reference to procedures, adequately resolved an RU comment about insufficient information on reporting.

Conclusion

The reviewers found that ECP, Revision 3, included provisions for meeting the elements of the review guidance and expectations described in Section 6.5 of RL/REG-96-03. The provisions, if properly implemented, should provide for an ECP that assures employees that their concerns about safety will be respected and addressed. Additionally, ECP Revision 3 addressed referral of concerns to affected DOE groups or other agencies and made it clear that the ECP Officer was responsible for meeting reporting requirements of regulatory agencies. Previous RU comments on this subject were adequately resolved.

4.0 CONCLUSION

On the basis of the considerations described above, the RU has concluded that there is reasonable assurance that the health and safety of the public, the workers, and the environment will not be adversely affected by this proposed amendment. The proposed Employee Concerns Program conforms with the RU's Review Guidance. The reviewers examined the current program and the rewritten ECP and concluded that the revised program did not represent a decrease in commitment and did not impact the effectiveness of the existing program. Previous RU comments in all review topics were adequately resolved. Accordingly, this review concludes that the proposed amendment to the authorization basis is acceptable.